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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
HOMER FAIRFIELD,)
d.b.a. CASA DEL REY APARTMENTS,)
Appellant,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 804

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a \$50 civil penalty for an alleged smoke emission violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Chris Smith, presiding officer, and Walt Woodward) at a formal hearing in the Seattle facility of the State Board of Industrial Insurance Appeals on September 4, 1975.

The Board waited for one-half hour after the scheduled time for the hearing but appellant did not appear. Respondent appeared through Keith D. McGoffin. Eugene E. Barker, Olympia court reporter, recorded the proceedings.

1 A witness was sworn and testified. Exhibits were admitted.

2 From testimony heard, exhibits examined, and respondent's exceptions
3 noted, the Pollution Control Hearings Board makes these

4 FINDINGS OF FACT

5 I.

6 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
7 a certified copy of its Regulation I containing respondent's regulations
8 and amendments thereto.

9 II.

10 Section 9.03(a) of respondent's Regulation I makes it unlawful to
11 cause or allow the emission for more than three minutes in any one hour
12 of an air contaminant darker in shade than No. 2 on the Ringelmann Chart.
13 Section 3.29 authorizes respondent to levy a civil penalty of not more
14 than \$250 for any violation of Regulation I.

15 III.

16 On January 13, 1975, there was emitted for six consecutive minutes
17 from the stack of appellant's Casa Del Rey Apartments, 321 Broadway East,
18 Seattle, King County, smoke equivalent in shade to No. 4 on the
19 Ringelmann Chart.

20 IV.

21 The emission was observed by an inspector on respondent's staff.
22 In connection therewith, respondent served on appellant Notice of
23 Violation No. 10347, citing Section 9.03 of respondent's Regulation I,
24 and Notice of Civil Penalty No. 1883 in the sum of \$50, which is the
25 subject of this appeal.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

1 V.

2 Any Conclusion of Law hereinafter stated which is deemed to be a
3 Finding of Fact is adopted herewith as same.

4 From these facts, the Pollution Control Hearings Board comes to
5 these

6 CONCLUSIONS OF LAW

7 I.

8 Appellant was in violation of respondent's Regulation I as cited
9 in Notice of Violation No. 10347.

10 II.

11 In appellant's Notice of Appeal there are unverified assertions
12 which cite grounds for possible mitigation of the penalty (new owner
13 taking steps to correct the smoking boiler). In a proposed Order dated
14 September 18, 1975, this Board employed those assertions in a suspension
15 of the penalty.

16 However, respondent's Exceptions to that proposed Order correctly
17 point out that material contained in a Notice of Appeal cannot be
18 considered as evidence in a formal hearing unless that material is
19 established through sworn testimony.

20 Appellant, not appearing at the hearing, offered no testimony.

21 In view of respondent's Exceptions and hearing nothing from
22 appellant, this Board has no course other than to disregard the assertions
23 in the Notice of Appeal. Any grounds for mitigation, therefore, are
24 gone. We are left with the conclusion that the penalty, being one-fifth
25 of the maximum allowable amount, is reasonable.

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27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 III.

2 Appellant, no doubt, will be displeased with this reversal of the
3 Board's proposed Order. There is, however, another side to the coin.
4 From this Board's docket file in this matter, these are the details:

5 In response to a written request from appellant, this Board
6 scheduled an informal conference in Seattle on May 23, 1975. Two Board
7 members, as well as the attorney for and other personnel of respondent
8 were present. Appellant did not appear.

9 Under date of June 26, 1975, this Board notified appellant that
10 the date of hearing would be selected from an accompanying list of
11 available dates (including September 4, 1975) on July 1, 1975. Appellant
12 offered no objection to any of the available dates. September 4, 1975,
13 was selected and this Board, under date of July 9, 1975, so notified
14 appellant in writing.

15 On September 4, 1975, at the appointed place in Seattle, two Board
16 members, a court reporter, respondent's attorney and at least one
17 witness on respondent's staff were assembled to hear this matter.
18 Appellant did not appear. The docket file disclosed no effort by
19 appellant, either in writing or by telephone, to seek a continuance.
20 After a delay of 30 minutes for appellant to appear, the hearing was
21 held in his absence.

22 Both on May 23, 1975 and September 4, 1975, taxpayer funds were
23 spent fruitlessly to afford appellant his requested right to activate
24 his appeal. This Board, having done everything in its power to give
25 appellant his "day in court," now must revise its proposed Order and
26 sustain the penalty.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 It does so with the gratuitous comment that if appellant had kept
2 either one of his dates with this Board he now probably would not be
3 subject to paying the civil penalty.

4 IV.

5 Any Finding of Fact herein which is deemed to be a Conclusion of
6 Law is adopted herewith as same.

7 Therefore, the Pollution Control Hearings Board issues this

8 FINAL ORDER

9 The appeal is denied and Notice of Civil Penalty No. 1883 is
10 sustained in the amount of \$50.

11 DONE at Lacey, Washington this 16th day of October, 1975.

12 POLLUTION CONTROL HEARINGS BOARD

13 Chris Smith
14 CHRIS SMITH, Chairman

15 Walt Woodward
16 WALT WOODWARD, Member

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27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

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Dolores Osland
DOLORIES OSLAND, Clerk of the
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER